



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, DC 20224

SMALL BUSINESS / SELF-EMPLOYED DIVISION

February 7, 2008

Control No: SBSE-0208-015
Effective: March 3, 2008
Expiration: February 7, 2009
IRM Impact: IRM 5.1.9 and 5.11.1

MEMORANDUM FOR DIRECTORS, COLLECTION AREA OFFICES

FROM: Frederick W. Schindler /s/ Frederick W. Schindler
Director, Collection Policy

SUBJECT: Interim Guidance Memorandum for Disqualified Employment Tax Levies

This memorandum provides interim guidance for processing disqualified employment tax levies (DETLs) and providing post-levy CDP rights for DETLs. These procedures will be effective March 3, 2008. Please ensure that this information is distributed to all affected employees within your organization.

The Small Business and Work Opportunity Tax Act of 2007 provided for modification of the collection due process procedures for employment tax liabilities. The new CDP tax law change amended I.R.C. § 6330(f) to permit levy to collect employment taxes without first giving a taxpayer a pre-levy CDP notice if the levy is a "disqualified employment tax levy." This amendment is effective for such levies served on or after September 22, 2007. A "disqualified employment tax levy" as described in new section 6330(h), is a levy to collect a taxpayer's employment tax liability if that taxpayer or a predecessor requested a CDP hearing under section 6330 for unpaid employment taxes arising in the two-year period prior to the beginning of the taxable period for which the levy is served. If a DETL is served, then the taxpayer shall be given an opportunity for "the hearing described in this section within a reasonable period of time after the levy." The taxpayer may seek judicial review in the Tax Court of the determination resulting from the section 6330(f) post-levy hearing.

Attached are procedures for identifying accounts that meet the criteria for DETL issuance and includes steps to follow for processing the DETL. In addition, a [DETL Articulate PowerPoint](#) is available to brief collection personnel on this change. The new [post-levy CDP notice \(Letter 1058D\)](#) is available as a PDF fillable form on the publishing services website and should be available as an ICS Macro in March 2008.

This change can be implemented on March 3, 2008. These procedures should assist us in addressing pyramiding trust fund taxpayers who use the CDP process to delay collection. Collection of unpaid employment tax liabilities by DETL is permitted to continue during the CDP proceedings.

If you have any questions, please contact Ken Marek, Program Manager, General Payment Processes and Analysis, or a member of your staff may contact Tasia Agne, Senior Program Analyst. Territory personnel should direct any questions, through their management staff, to the appropriate Area contact.

Attachment

cc: www.irs.gov

DISQUALIFIED EMPLOYMENT TAX LEVIES AND POST-LEVY CDP RIGHTS

Disqualified Employment Tax Levy	<p>1) A disqualified employment tax levy (DETL) is comprised of these three components:</p> <ul style="list-style-type: none"> a. It's a levy served to collect an employment tax liability; b. The levy is for taxes owed by a taxpayer or a predecessor who previously requested a CDP levy hearing; and c. The prior CDP hearing involved unpaid employment taxes that arose in the two year period before the period for which the levy is served. <p>2) Even if a taxpayer's employment tax liabilities meet the criteria for a DETL, this action is discretionary and we have the option to issue a pre-levy CDP notice for DETL periods, if the situation warrants. For example, the issuance of a pre-levy notice might be advisable if no IRC 6331(d) notice has been issued or there has been no contact with the taxpayer within the last 180 days.</p> <p>3) A DETL can be issued if a predecessor of the taxpayer requested a CDP hearing that meets the criteria. Note: Predecessor hearing requests should not be used as a basis of a DETL until the term "predecessor" is defined in the CDP regulations.</p>
Prior Request for CDP Hearing	<p>1) The prior request refers to a timely, processable CDP hearing request. Refer to IRM 5.1.9 for information regarding the timeliness and processability of CDP hearing requests. Even if the request is subsequently withdrawn, it qualifies as a prior hearing request. Note: Requests for an equivalent hearing or untimely requests for CDP hearings do <u>not</u> satisfy the requirement of having had a prior hearing request. Thus, if the taxpayer requests an equivalent hearing or submits an untimely request for a CDP hearing, that request cannot be used as a basis for a DETL.</p> <p>2) The following can be used to determine if the taxpayer requested a prior CDP levy hearing involving unpaid employment taxes.</p> <ul style="list-style-type: none"> a) First hand knowledge of a prior CDP levy hearing. In most instances involving pyramiding trust fund taxpayers, the revenue officer assigned the case will be aware of previously requested hearings. b) Case history. c) A TC 971 ac 275 on prior modules indicates a prior timely lien or levy hearing request, although ac 275 does not identify whether a request is for a lien or levy hearing. Use IDRS command code CDPTRT to identify if a levy hearing was requested. It will list the MFT, tax period, and hearing type. Note: It is essential that hearing requests are appropriately added to the CDPTS to ensure that there is a record of the hearing requests. Note: Effective March 17, 2008 a new TC 971 ac 630 will be used to identify timely levy hearing requests. This code will be generated when the hearing request is added to the CDP tracking system. d) By contacting Appeals at 559-456-5931 to see if they have record of a prior hearing request received in Appeals.

	<p>3) A post-levy request for a CDP hearing made in response to a post-levy CDP notice also can constitute a prior CDP hearing request as a basis for a DETL.</p> <p>4) The period(s) listed by the taxpayer on the CDP hearing request to be used as a basis of a DETL must be listed on a CDP levy notice preceding the request. There should be an unreversed TC 971 ac 069 dated within about 30 days of the prior CDP levy hearing request.</p>
Two-Year Look Back Period	<p>1) In addition to seeing if the taxpayer requested a CDP levy hearing from a pre or post-levy CDP notice, we need to check to see if the hearing request involved employment taxes arising and ending within the two-year period before the beginning of the taxable period for which the DETL is served. Thus, the two-year look back period is measured from the beginning of the period for which the DETL is served.</p> <p>2) If the taxpayer requested a CDP levy hearing for employment taxes arising during a calendar quarter that ended during the two-year period, the module meets the criteria for a DETL.</p>

Ex.	CDP Levy Hearing Requested for Taxes for Quarter Ended	Was request timely?	Additional taxes Subsequently Assessed for Tax and Quarter Ended	Liability for Additional Tax Begins	2 Year Look Period for additional taxes		Does Additional Employment Tax Liability Qualify for DETL?
					Begins	Ends	
1	941- 12/31/2005	Yes	941- 06/30/2006	04/01/2006	04/01/2006	04/01/2004	Yes
2	941 - 03/31/2006	Yes	941- 12/31/2005	10/01/2005	10/01/2005	10/01/2003	No
3	941- 03/31/2004	Yes	941 - 06/30/2006	04/01/2006	04/01/2006	04/01/2004	No
4	941- 12/31/2005	No	941 - 06/30/2006	04/01/2006	04/01/2006	04/01/2004	No

Example 1:

- Taxpayer owes for 4th quarter 2005 (quarter ended 12/31/2005)
- Taxpayer requested a timely CDP levy hearing
- Taxpayer accrues additional employment tax liability for the quarter ended 06/30/2006
- Additional liability qualifies for DETL levy because the taxpayer requested a prior levy hearing for a quarter that ended (12/31/2005) within the two-year look back period (04/01/2004 thru 04/01/2006)

Example 2:

- Taxpayer owes for 1st quarter 2006 (quarter ended 03/31/2006)
- Taxpayer requested a timely CDP levy hearing
- Taxpayer assessed additional employment tax liability for the quarter ended 12/31/2005
- Additional liability does not qualify for DETL levy because the taxpayer requested a prior levy hearing for a quarter that ended (03/31/2006) outside the two-year look back period (10/01/2003 thru 10/01/2005)

Example 3:

- Taxpayer owes for 1st quarter 2004 (quarter ended 03/31/2004)
- Taxpayer requested a timely CDP levy hearing.
- Taxpayer accrues additional employment tax liability for the quarter ended 06/30/2006
- Additional liability does not qualify for DETL levy because the taxpayer did requested a prior levy hearing for a quarter that ended (03/31/2004) **outside** the two-year look back period (04/01/2004 thru 04/01/2006)

Example 4:

- Taxpayer owes for 4th quarter 2005 (quarter ended 12/31/2005)
- Taxpayer requested an equivalent levy hearing
- Taxpayer accrues additional employment tax liability for the quarter ended 06/30/2006
- Additional liability does not qualify for DETL levy. The taxpayer requested a prior levy hearing for a quarter that ended (12/31/2005) **within** the two-year look back period (04/01/2004 thru 04/01/2006). However, it was **not** a timely CDP levy hearing request.

Issuing a DETL	<p>If the tax period meets the criteria for issuing a DETL and levy action is determined to be appropriate,</p> <ul style="list-style-type: none">• Make sure the taxpayer received the Notice of Intent of Levy under IRC 6331(d). This is the CP 504 notice or the "Status 58" notice. If the CP 504 notice was not issued, issue the pre-levy CDP notice, L-1058. This meets the IRC 6331(d) and IRC 6330 requirement.• Document the case history regarding the DETL determination. For example, DETL to be issued for tax periods 01-200606 and 01-200609. TP qualifies for a DETL based on CDP levy hearing requested on 07/27/2007 for tax periods 01-200512 and 01 200603.• Prepare and issue the DETL. Note: The group manager will need to issue the DETL on ICS. This is a requirement because there is no TC 971 ac 069 on the module.
Post-Levy CDP Notice	<p>1) If a DETL is served, issue the post-levy CDP notice when sending the taxpayer's copy of the levy. This should be done as soon as possible but no more than 10-days after the levy. If the Notice of Levy is mailed, allow time for the Notice of Levy to be received through the mail before issuing the post-levy CDP Notice but no more than 10-days after the levy is issued. Document in the ICS history the reason if the post-levy CDP notice is issued later than 10 days after issuing the DETL</p> <p>2) Use Letter 1058(D), Notice of Levy and Notice of Your Right to a Hearing. Include a copy of the levy, Form 12153, Pub 594 and Pub 1660 with the letter. Note: If the taxpayer received a pre-levy CDP notice for the period being levied, do not issue a post-levy CDP notice.</p> <p>3) The notice can be given in person, left at the taxpayer's home or business, or sent to the taxpayer's last known address by certified or registered mail. Note: Use registered mail only if the taxpayer is outside the United States. There is no international certified mail.</p>
Post-Levy DETL Hearing Request	<p>1) The DETL post-levy hearing request is processed similar to other hearing requests. Refer to IRM 5.1.9 for processing hearing requests.</p>

	<p>2) The same procedures regarding the suspension of the Collection Statute Expiration Date (CSED) apply. If a timely filed post-levy CDP hearing request is filed, the CSED is suspended.</p> <p>3) Document, for the benefit of Appeals, either in the case history or on Form 12153A, whether continued collection action is planned.</p>
DETL during CDP Hearing for Periods Subject to the Hearing	<p>1) A DETL may be served during a timely requested pre or post-levy CDP hearing or judicial review of such hearing to collect employment tax liabilities (DETL tax periods) subject to the hearing.</p> <p>Note: In determining if a DETL is permitted during the hearing or judicial review to collect employment taxes subject to the hearing, the request giving rise to the hearing cannot be used as a basis for the DETL.</p> <p>2) A DETL may be served during a hearing or judicial review if it is appropriate. For example, a DETL may be served during a hearing or judicial review if collection is at risk (e.g., taxpayer's business is deteriorating or taxpayer is pyramiding).</p> <p>3) If the DETL is to take place during the hearing, check IDRS for actions that may prohibit levy action, i.e., TC 480 or TC 971 a/c 043. If no apparent TC codes, then contact the Appeals Team Manager of the assigned hearing officer preferably via e-mail regarding planned levy action. Determine whether Appeals has information that prohibits levy or may affects the decision to levy.</p> <p>4) If the DETL is to take place during judicial review, contact the Counsel attorney assigned the case to advise him or her of the planned levy action and to determine if there is any new information that may affect the decision to levy.</p>